

## **ARTICLE III**

### **ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS**

#### **SECTIONS**

- 3-101 The Development Agreement
- 3-102 Bonding and Recording of Final Plats
- 3-103 Bond Standards and Requirements
- 3-104 Completion of Improvements
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- 3-106 Acceptance of Dedication Offers
- 3-107 Deferral or Waiver of Required Improvements
- 3-108 Issuance of Building Permits and Certificates of Occupancy

#### **3-101 THE DEVELOPMENT AGREEMENT**

A completed "Development Agreement" shall have been prepared and executed prior to initiation of any "land development activity" within any development to which these regulations are applicable. A draft development agreement shall be prepared following approval of the Construction Plans. The draft agreement shall reference the design incorporated within the approved Construction Plans and shall be sufficient in form to assure that proposed construction methods and materials meet or exceed minimum established standards. The draft development agreement and an estimate of the amount of bond (as established by the Town Engineer) shall be sent to the applicant for approval. Development activity may begin upon acceptance of the development agreement by the applicant and acceptance of the required bond by the Planning Commission.

#### **3-102 BONDING AND RECORDING OF FINAL PLANS**

##### **3-102.1 Construction Prior to Recording Final Plan**

When the developer desires to proceed with construction of a portion or all of the required improvements prior to recording the Final Plat, a development agreement conforming with the terms of these regulations shall be executed and a reclamation bond shall be provided in an amount determined by the Town Engineer to be sufficient to reclaim the property in the event the developer or the bonding company do not complete the required improvements. Such reclamation is to include filling trenches, closing off streets, performing drainage work, re-seeding and other actions necessary to make the property safe and to remedy any nuisance, such as soil erosion, the property may be causing to surrounding property owners or the public in general.

After completion of a portion of the required improvements, the developer may elect to replace the reclamation bond with a performance bond as specified in Section 3-104, COMPLETION OF IMPROVEMENTS, which will guarantee completion of the remaining required improvements. Under such terms, the Town shall record the approved Final Plan, thereby allowing the sale of lots and issuance of building permits.

### **3-102.2 Recording of Final Plat Prior to Construction**

When the applicant wishes to record a Final Plan prior to completion of required improvements, the applicant shall provide a performance bond conforming to Section 3-103, BOND STANDARDS AND REQUIREMENTS, guaranteeing the installation of such improvements. The amount and form of such bond shall in all regards be sufficient to guarantee to the governing body, or other agency ultimately responsible for acceptance of the facilities, satisfactory construction, installation, and dedication, free and clear of any encumbrances, of the incomplete portion of required improvements.

## **3-103 BOND STANDARDS AND REQUIREMENTS**

### **3-103.1 General**

In order to insure that the work will be completed in accordance with approved plans and specifications, all improvements proposed in conjunction with any subdivision must be covered by adequate bond unless such work is to be totally completed prior to filing of any Final Plan for any portion of the development site. When the work is to be completed prior to filing of a Final Plan, the amount of such bond shall be sufficient to insure that the building site may be stabilized in the event of the failure of the applicant to complete the work.

### **3-103.2 Amount of Bond**

The applicant shall post good and sufficient bond with the Planning Commission in the amount of one hundred-twenty-five (125) percent of the Town Engineer's estimate of cost to assure completion of the work. Good and sufficient surety shall include the types of bond specified in Subsection 3-103.3, Types of Bond. Each bond shall be accompanied by a "Development Agreement", as found in Section 3-101, THE DEVELOPMENT AGREEMENT, whereby the applicant agrees to make and install the improvements in accordance with the approved plans and specifications.

### **3-103.3 Types of Bond**

Subject to the standards and requirements of this Article and acceptance by the Planning Commission, the following types of bond may be accepted for purposes of guaranteeing completion of improvements required by the regulations:

- Irrevocable Standby Letter of Credit.
- Cash Escrow or bank assignment of certificates of deposit with a federally insured bank having assets of at least \$100 million.
- Surety or performance bond.

### **3-103.301     Irrevocable Standby Letters of Credit**

An irrevocable standby letter of credit may be utilized as the means of providing bond for improvements required under the various provisions of these Regulations. Any letter of credit shall be drafted so as to represent an obligation of the financial institution to the Town and not an obligation to the permittee. All Letters of Credit, and each provision thereof, shall be governed and construed in accordance with the Uniform Customs and Practice for Documentary Credits (1983 Revision and subsequent revisions), International Chamber of Commerce, Publication 400 and Sections 47-5-101 through 47-5-118, Tennessee Code. Such letters shall be for one (1) year and shall be automatically renewable for successive one (1) year periods without any effort on the part of the Town. They shall be renewed until released by the Town. However, said letters may be revoked after giving the Town written notice with ninety (90) days opportunity to cash the letter. Such notice shall be by certified mail, return receipt requested.

### **3-103.302     Escrow Deposits for Improvements**

#### **a.     Acceptance of Escrow Funds**

The term “Cash Escrow” as used in these regulations refers to two types of performance guarantees, cash escrows and bank assignment of funds. In the case of either cash or other near cash (i.e., certificates of deposit) guarantees, all funds shall be maintained in accounts that are beyond the reach of the developer and subject to an escrow agreement.

#### **b.     Procedures on Escrow Fund**

All escrows shall be held by the Town, kept in its bank accounts, and totally under control of the Town. A detailed “Escrow Agreement” shall be prepared and appropriately endorsed by all parties to such agreement at the time of creation of any escrow account. The developer’s tax identification shall be used for the escrow and the developer shall be responsible for paying tax on any interest credited to the escrow account.

### **3-103.303     Performance Bonds**

A performance bond may be used as the means of providing bond for improvements required under the various provisions of these Regulations. In no instance shall any performance bond be accepted as a guarantee unless a “Development Agreement” required by the provisions of Section 3-101, DEVELOPMENT AGREEMENT, accompanies such bond. Such agreement shall detail the specific nature and estimated cost of all improvements. All performance bonds shall provide a location within Cheatham County or a county adjoining Cheatham County where such bond(s) may be drawn upon. All performance bonds shall be drafted so that the only requirement for the Town to draw upon such bond is to notify the financial institution (grantor) that:

"We have incurred liability by reason of the failure of the applicant/developer/ owner to complete the construction of their project \_\_\_\_

[insert name of subdivision and plans] in accordance with the definitive subdivision plans and development agreement and the rules and regulations governing the subdivision of land within Kingston Springs, Tennessee." The amount drawn, which may be more than required to complete the project, will be held in a segregated bank account until the work can be bid competitively and the bid awarded and paid for or until the contract for the work is, otherwise, let and the work paid for. Any excess over the cost of completing the work will be returned to the grantor."

### **3-104 COMPLETION OF IMPROVEMENTS**

Generally, the final paving course shall not be applied until seventy-five (75) percent of the houses in the subdivision, or phase thereof, fronting along a street are completed. Where maintenance, safety or an unforeseen problem is created by the absence of the final paving course; paving may be allowed of a street prior to construction of seventy-five (75) percent, but not less than fifty (50) percent, of the houses fronting along a street. The Town may permit final paving to occur and the Town Engineer may allow subsequent reduction of the performance bond to an amount sufficient to guarantee maintenance of the streets as specified below. The Town Engineer may permit the maintenance bond to be renewed if additional time is needed to complete further build out of the subdivision. The Town Engineer may require that the final paving course be applied one (1) year or longer after the date of the issuance of the first Use and Occupancy Permit in said subdivision or phase thereof irregardless of the number of houses built. Under no circumstances shall final paving occur until all utility installations, including service lines to individual lots, are complete.

#### **3-104.1 Failure to Complete Improvements**

In those cases where development agreements have been established, surety instruments have been posted and required improvements have not been installed within the terms of such agreements, the Planning Commission, thereupon, may declare the surety to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default. If the improvements are not completed within the time period specified, including any extension thereof, no additional building permits shall be issued for any lot or portion of such property until such facilities are completed to the satisfaction of the governing body. The applicant and the financial institution issuing the bond shall be severally and jointly responsible for completing said improvements according to specifications.

#### **3-104.2 Maintenance of Improvements**

The applicant shall be required to maintain all improvements for one (1) year after acceptance of the public improvements by the governing authority. Additionally, the applicant shall be required to file a maintenance/warranty bond with the governing body prior to dedication. This bond is established for purposes of assuring the quality of the materials and construction of such facilities. Such bond shall be in an amount considered adequate by the Town Engineer to assure satisfactory condition of the required improvements. In no event, will this bond be set below an amount equal to ten (10) percent of the estimated original cost of such improvements.

### **3-104.3 Inspection of Improvements**

The Town may provide for inspection of required improvements during construction. If the appropriate governmental representative finds upon inspection that any of the required improvements have not been constructed in accordance with the accepting body's construction standards and specifications, the applicant shall be responsible for completing such improvements to the required standards. The fact that the Town inspects the facilities in no way relieves the developer from designing or installing such facilities in accordance with the provisions of these regulations and the established development agreement.

## **3-105 RELEASE OR REDUCTION OF RECLAMATION OR PERFORMANCE BOND**

### **3-105.1 Certificate of Satisfactory Completion**

Prior to release of any performance surety the engineer in charge of construction of such improvements shall be required to certify that such improvements have been installed in accordance with provisions of these regulations, the completed development agreement and the approved Construction Plans and specifications. Upon receipt of such certification and recommendations from the Planning Commission, the governing body may accept the dedicated improvements in accordance with the procedures set forth in Section 3-106, ACCEPTANCE OF DEDICATION OFFERS, of these regulations.

### **3-105.2 Reduction of Performance Bonds**

The surety instruments guaranteeing installation of improvements may be reduced upon completion of the base asphalt and again upon completion, dedication and acceptance of such improvements and then only to the ratio that the cost of the public improvements dedicated bears to the total cost of public improvements included in said plan. In no event shall a performance bond be reduced below fifteen (15) percent of the principal amount prior to final acceptance of all items covered under such instrument.

## **3-106 ACCEPTANCE OF DEDICATION OFFERS**

Acceptance of offers of dedication of improvements for public maintenance shall be by action of the governing body. Such action shall be in the form of a resolution recommended by the Planning Commission to the accepting body. Approval by the Planning Commission of a subdivision plan shall not be deemed to constitute or imply an acceptance by the local government, or other agency ultimately responsible for acceptance of the facilities, of any public way, easement, or other ground shown on the plan. The Planning Commission may require the plan to be endorsed with appropriate notes to this effect.

## **3-107 DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS**

The Planning Commission may defer or waive at the time of Final Plan approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interest of the public health, safety, and general welfare, or which are inappropriate, because of inadequacy or lack of connecting facilities. Whenever it is deemed necessary by the Planning Commission to defer

construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or other reasons, the developer shall either pay his share of the costs of the future improvements to the governing body prior to signing of the Final Subdivision Plat or post a bond ensuring completion of said improvements.

### **3-108 ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY**

Where development agreements and surety instruments have been required for a subdivision, or any section of a subdivision, and such are determined to be in default, no building permit or certificate of occupancy shall be issued for any building in the subdivision or any affected section thereof prior to completion and dedication of the improvements to the appropriate governmental unit, as required in the Planning Commission resolution of approval of the Final Subdivision Plan. The extent of public way improvements shall be adequate for vehicular access by the prospective occupant and by police and fire equipment prior to the issuance of a building permit.

No building permit shall be issued for the final ten (10) percent of lots in a subdivision, or if ten (10) percent is less than two (2) lots, for the final two (2) lots of a subdivision, until all public improvements required by the Planning Commission's resolution of final plan approval have been fully completed, dedicated, and accepted by the governing body.